

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0487**

Arctos Wealth Management and Fiduciary LLC,
o/b/o Irvin John Cooper, Sr.,
Respondent,

vs.

Kathy Jenö, aka Kathy Brown, aka Kathy Ann Verdorn,
aka Kathy Skweres, aka Kathy Rothfuaz,
Appellant.

**Filed January 30, 2023
Affirmed
Gaïtas, Judge**

Ramsey County District Court
File No. 62-HR-CV-21-1083

Daniel Kufus, Kufus Law, LLC, Roseville, Minnesota (for respondent)

David L. Ludescher, Grundhoefer & Ludescher, P.A., Northfield, Minnesota (for
appellant)

Laurie J. Nevers, St. Paul, Minnesota (for Irving John Cooper, Sr.)

Considered and decided by Gaïtas, Presiding Judge; Bratvold, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Kathy Jenö (n/k/a Kathy Cooper) appeals from a harassment restraining
order (HRO) obtained by respondent Arctos Wealth Management and Fiduciary LLC on

behalf of Irvin John Cooper, Sr. She argues that the district court did not have jurisdiction to issue the HRO, respondent lacked standing to petition for an HRO on Cooper's behalf, the district court abused its discretion by issuing an HRO against Cooper's wishes, and there was insufficient evidence to support the issuance of the HRO. Because none of appellant's arguments have merit, we affirm.

FACTS

Cooper is an 82-year-old man who became subject to an emergency guardianship in the fall of 2021. Days later, the emergency guardian, respondent Arctos Wealth, petitioned for an HRO against appellant on Cooper's behalf. The district court granted an ex parte HRO. Appellant contested the HRO and requested a hearing. Before the hearing, and in a separate probate matter, the district court appointed respondent to be Cooper's general guardian and general conservator for a one-year period. Following an evidentiary hearing on the HRO, the district court determined that appellant's behavior constituted harassment and granted an HRO that prohibits appellant from having unsupervised contact with Cooper, among other conditions, until February 2024. Appellant now appeals the HRO.

In its order granting the HRO, the district court stated that respondent's witnesses at the evidentiary hearing were credible and found "the facts to be as alleged in the petition and as presented by [respondent]'s witnesses."¹ The following summary of the facts is

¹ Appellant did not testify or present any evidence at the evidentiary hearing.

based on the evidence introduced at the evidentiary hearing and on the facts as alleged in the HRO petition and supporting documents.

Cooper lost his wife of almost 60 years in the spring of 2020. He spent much of 2020 struggling with health issues while staying in an assisted living facility. That summer, Cooper met appellant online, and at some point, they began having in-person contact. In April 2021, Cooper drove appellant to the hospital at appellant's request, and as a result, Cooper contracted COVID-19. Cooper was hospitalized and "incoherent" due to the illness. Following a two- to three-month stay in the hospital and a rehabilitation center, he was discharged to an assisted living facility. During this time, Cooper's children sought an emergency guardianship, and his son was appointed as an emergency guardian. The district court also appointed an attorney to represent Cooper's interests.

While Cooper was subject to the emergency guardianship, appellant removed him from the assisted living facility without approval from the family, the facility, or the emergency guardian. Cooper missed important medications, and his son was concerned about Cooper's nutrition, hygiene, and general stability. During this time, Cooper paid a \$4,000 veterinary bill for appellant and bought appellant a car. Appellant also attempted to break into Cooper's home to take his personal items.

Eventually, Cooper and his son filed a stipulation with the district court. The stipulation required that Cooper consent to moving to a different assisted living facility, that Cooper's son would withdraw the emergency guardianship, and that respondent would be appointed as Cooper's conservator.

Cooper failed to follow the stipulated agreement, however. He left the assisted living facility with appellant. Cooper would not meet with his attorney or a representative of respondent unless appellant or appellant's attorney was present.

Appellant continued to isolate Cooper by interfering with Cooper's family relationships. She was overheard verbally abusing Cooper in a bank parking lot—ridiculing him for agreeing to a conservatorship and instructing him to do exactly what she said. Appellant also forwarded Cooper's mail to her home address without the knowledge or consent of respondent or Cooper's family.

On October 8, 2021, the district court appointed respondent as Cooper's emergency guardian. The emergency guardianship order and letters of guardianship specifically granted respondent all statutory powers of a guardian, including securing no contact orders on Cooper's behalf. *See* Minn. Stat. § 524.5-313(c) (2022).

One week later, respondent obtained an ex parte HRO on Cooper's behalf. Police attempted to serve appellant with the HRO at her home, but appellant refused to open the door. Instead, she sat inside her darkened home, Cooper by her side, and appeared to be video recording the police officer and respondent's representative with her camera. A few days later, appellant enrolled in a state program that allows certain protected people to avoid in-person service of process. On October 19, 2021—before appellant could be served with the HRO—she traveled to Iowa with Cooper, and they married.

Once appellant was served with the ex parte HRO, she requested a hearing. In the meantime, the district court extended respondent's status as emergency guardian for an additional 60 days and ensured that Cooper had his own independent counsel.

Before the hearing, appellant continued to have contact with Cooper in violation of the ex parte HRO. While in appellant's care at appellant's home, Cooper fell and broke his hip. He did not receive immediate medical attention, which the district court attributed to appellant. Cooper was ultimately hospitalized and required surgery. Following the surgery, two individuals unknown to the family twice attempted to remove Cooper from the hospital without physician approval. Cooper did not return phone calls from his adult children. Appellant repeatedly called the hospital and asserted that appellant's guardian had no authority to plan for Cooper's discharge. She also attempted to have Cooper's medical records released to her attorney without the guardian's authorization.

Around this time, both appellant and Cooper moved to dismiss the HRO. In late December 2021, the district court extended the ex parte HRO and scheduled the hearing requested by appellant.

The hearing was held over two days, January 26 and February 3, 2022. At the hearing, both Cooper's son and respondent's representative testified about the events that led to seeking an HRO on Cooper's behalf. Cooper also briefly testified. According to Cooper, appellant had never harassed him and he did not want an HRO. The district court took the HRO request under advisement, although the ex parte HRO remained in effect.

On February 4, 2022, a different district court judge acted in the separate probate proceeding involving the same parties. In that case, the district court found Cooper to be

incapacitated and appointed respondent to be Cooper's general guardian and conservator for a one-year period.²

In the HRO proceedings, the district court issued an order granting the HRO on March 14, 2022. It concluded that appellant's "problematic behavior" constituted harassment. The HRO, which remains in effect, prohibits appellant from having "direct or indirect contact" with Cooper unless "authorized by court order" in the probate matter and "approved by the guardian."

DECISION

Appellant challenges the district court's order granting the HRO. A district court's issuance of an HRO is generally reviewed under an abuse-of-discretion standard. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). "A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law." *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009) (quoting *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006)); see *Sperle v. Orth*, 763 N.W.2d 670, 672-73 (Minn. App. 2009). A district court's findings of fact will not be set aside unless clearly erroneous, and due regard is given to the district court's opportunity to judge the credibility of witnesses. Minn. R. Civ. P. 52.01; see *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-23 (Minn. 2021) (discussing clear-error review and noting that it is "a review of the record to confirm that evidence exists to support the decision"). But this court will reverse the issuance of an HRO if it is not supported by sufficient evidence.

² Appellant also appealed the probate decision. The appeal in that case is currently pending before this court.

Bjergum v. Bjergum, 392 N.W.2d 604, 606-07 (Minn. App. 1986). And the district court’s issuance of an HRO must be based on admissible testimony and document evidence. *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004), *rev. denied* (Minn. Sep. 29, 2004).

Appellant argues that the district court abused its discretion in four ways. First, she contends that the district court lacked “jurisdiction” to issue the HRO because the emergency guardian was the petitioner for the ex parte HRO, but the emergency guardianship had been terminated by the time the district court issued the March 14, 2022 HRO. Second, she argues that respondent did not have standing to seek an HRO on behalf of Cooper over Cooper’s objection. Third, she asserts that the HRO violated the Minnesota statute that protects the rights of persons subject to guardianship, including the right to communicate with others. Fourth, she contends that the evidence was insufficient to establish that she engaged in harassment. We reject each of appellant’s arguments.

I. Appellant provides no legal authority for her challenge to the district court’s “jurisdiction” to issue the HRO.

Appellant contends that the district court lacked “jurisdiction” to issue the March 14, 2022 HRO on Cooper’s behalf because the emergency guardianship expired on February 4, 2022. Although the district court appointed respondent as Cooper’s general guardian on the same day that the emergency guardianship expired, appellant notes that respondent had *petitioned* for the ex parte HRO when it was serving as Cooper’s *emergency* guardian. Appellant argues that, because the emergency guardianship was terminated before the district court issued the HRO, the district court was somehow divested of “jurisdiction” and the HRO now in effect is a “legal nullity.”

Appellant does not specify the type of jurisdiction that the district court purportedly lacked. Furthermore, appellant cites no legal authority for this argument in her brief, and her attorney conceded during his oral argument that there is no authority for it. We therefore decline to address this issue. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal).

II. Respondent had standing to seek an HRO on Cooper's behalf.

Appellant next argues that respondent lacked standing to seek an HRO on Cooper's behalf because, first, respondent was an emergency guardian and not a general guardian when it petitioned for the ex parte HRO, and second, Cooper opposed the HRO. When, as here, the relevant facts are undisputed, the existence of standing is reviewed de novo. *Richards v. Reiter*, 796 N.W.2d 509, 512 (Minn. 2011); *Pollard v. Crowghost*, 794 N.W.2d 373, 376 (Minn. App. 2011).

Appellant first contends that, although the HRO statute provides that a “victim’s guardian or conservator” may seek a restraining order, the statute does not explicitly authorize an *emergency* guardian to do so. *See* Minn. Stat. § 609.748, subd. 2(a) (2022) (“A person who is a victim of harassment or the victim’s guardian or conservator may seek a restraining order . . .”).³ She again points out that respondent was Cooper’s emergency guardian when it filed the petition for an ex parte HRO.

³ Minnesota Statutes section 609.748, subdivision 2 was amended in 2022. 2022 Minn. Laws ch. 82, § 1, at 394-95. The amendment added additional subsections and made some

This argument is unpersuasive for several reasons. First, appellant cites no legal authority for the premise that emergency guardians do not have standing to petition for HROs on behalf of victims. *See Wintz*, 558 N.W.2d at 480 (declining to address an inadequately briefed issue). Second, the statutory definition of “guardian” expressly includes emergency guardians. Minn. Stat. § 524.5-102, subd. 5 (2022) (defining a “guardian,” for the purpose of Minnesota’s guardianship laws, as “a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment . . . by the court, and includes a limited, *emergency*, or temporary substitute guardian.” (emphasis added)). Third, the emergency guardianship order specifically conferred on respondent the power to seek an HRO on Cooper’s behalf. It gave respondent all the powers of a guardian, including the authority to “institute suit on behalf of the person subject to guardianship and represent the person subject to guardianship in . . . harassment proceedings” to obtain “restraining orders, [and] orders for protection.” Minn. Stat. § 524.5-313(c)(10). These powers also include the authority to “restrict the ability of the person subject to guardianship to communicate, visit, or interact with others” when “interaction with the person poses a risk of significant physical, psychological, or financial harm to the person subject to guardianship, and there is no other means to avoid such significant harm.” Minn. Stat. § 524.5-313(c)(6). Fourth, respondent was no longer the emergency guardian when

substantive changes that are not relevant to the outcome of this case. We therefore cite the most current version of the statute. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000).

the district court issued the HRO on March 14, 2022. By that point, it had been appointed to be Cooper's general guardian.⁴

Appellant's second argument is that respondent lacked standing to obtain an HRO on Cooper's behalf because Cooper opposed the HRO. While appellant frames this issue as one of standing, she does not explain how Cooper's opposition to the HRO affected respondent's standing. *See Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007) (stating that standing is established when the initiating party is "the beneficiary of some legislative enactment granting standing"); *see also* Minn. Stat. §§ 609.748, subd. 2(a) (including guardians in the class of persons with standing to seek a restraining order on behalf of a protected person); 524.5-313(c)(10) (granting guardians the power to institute harassment proceedings, including restraining orders, on behalf of a protected person). Nor does appellant cite any law to support her claim that Cooper's opposition implicated respondent's standing. We therefore decline to consider appellant's second standing argument. *See Wintz*, 558 N.W.2d at 480; *Brodsky*, 733 N.W.2d at 479.

⁴ If appellant's argument is accepted, a person subject to an emergency (but not yet general) guardianship would lack the ability to seek an HRO in what is often a time-sensitive situation. The appointment of an emergency guardian can suggest that the person subject to the emergency guardianship has a compromised ability to make decisions. Appellant's argument that an emergency guardian cannot seek an HRO on behalf of the person subject to the emergency guardianship would, if adopted, preclude a person who is possibly compromised from obtaining timely relief that is available to those who are not so compromised. We decline to read a statute enacted to *protect* possibly compromised persons to produce such a result.

III. The district court did not abuse its discretion by issuing the HRO despite Cooper's stated opposition.

Appellant argues that the district court erred “as a matter of law” by issuing the HRO over Cooper’s objection. Generally, appellate courts review de novo a district court’s application of law. *Harlow v. State, Dep’t of Hum. Servs.*, 883 N.W.2d 561, 568 (Minn. 2016). But “[w]here, as here, the application of law occurs as part of a discretionary decision to grant an HRO, we review that decision for an abuse of discretion.” *Harris ex rel. Banks v. Gellerman*, 954 N.W.2d 604, 607 (Minn. App. 2021) (citing *Kush*, 683 N.W.2d at 843). We therefore consider whether the district court abused its discretion by granting the HRO over Cooper’s objection.

Relying on our decision in *Gellerman*, appellant contends that the district court erred in granting the HRO because it was against Cooper’s wishes. In *Gellerman*, a guardian petitioned for an HRO over the objection of the protected individual. *Id.* at 606-07. The protected individual submitted an affidavit to the court objecting to an HRO. *Id.* at 606. Although the protected person was available and at the courthouse during the HRO hearing, the protected person, who was unrepresented at that point, did not attend the hearing and was not called to testify. *Id.* at 606 n.1. The district court also did not consider whether the guardian had authority to seek an HRO under the guardianship order. *Id.* at 607. Given these circumstances, we concluded that the district court abused its discretion in granting the HRO. *Id.* at 610. We stated that, in deciding whether to grant the HRO, the district court should have considered the bill of rights of persons subject to guardianship, which includes a right to communication and visitation with individuals of the protected person’s

choosing. *Id.* at 608-09; *see* Minn. Stat. § 524.5-120 (2022) (bill of rights of persons subject to guardianship).⁵

In granting the HRO here, the district court specifically referred to *Gellerman* and the bill of rights of persons subject to guardianship. The district court noted that the circumstances here were different than those in *Gellerman* because Cooper was represented by independent counsel, he attended the hearing, and he testified about his wishes. The district court found that Cooper’s rights as a person subject to guardianship were “being given maximum effect possible without risking significant physical, psychological, and

⁵ Relevant rights identified by the bill of rights include the right to:

- (1) treatment with dignity and respect;
- (2) due consideration of current and previously stated personal desires . . . ;
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- (4) exercise control of all aspects of life unless delegated specifically to the guardian . . . by court order;
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- (6) petition the court to prevent or initiate a change in abode;
-
- (9) personal privacy;
- (10) communicate, visit, or interact with others . . . unless the guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological, or financial harm to the person subject to guardianship, and there is no other means to avoid the significant harm . . . ;”
-
- (13) at any time, petition the court for termination or modification of the guardianship. . . ; [and]
- (14) be represented by an attorney in any proceeding or for the purpose of petitioning the court . . . [.]

Minn. Stat. § 524.5-120.

financial harm to him.” And the district court specifically tailored the HRO to be “co-extensive with the visitation directives issued by the probate court in the conservatorship and guardianship matter.” The HRO allows appellant to “have contact with [Cooper] and be at his residence if and as authorized by [c]ourt order in [the probate file] and approved by the guardian.” We therefore disagree that the district court abused its discretion by granting the HRO over Cooper’s objection.

Appellant also contends that the district court erred when it rejected Cooper’s testimony that appellant had not harassed him. The district court found that this portion of Cooper’s testimony was not credible. It is the district court’s role to evaluate witness credibility, especially when there are conflicting accounts as to whether harassment occurred. *See* Minn. R. Civ. P. 52.01; *see also In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (“Considerable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.”). Appellate courts give “deference to the district court’s opportunity to evaluate witness credibility.” *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). We defer to the district court’s determination that some of Cooper’s testimony was not credible.

Although Cooper may not have wanted an HRO, the district court did not abuse its discretion when it issued the HRO over Cooper’s objection. Cooper was given a full opportunity to express his views on the HRO. He was represented by counsel, he was present during the hearing, and he testified about his wishes. The district court acted within

its discretion by making credibility determinations. And the district court's order shows that it carefully weighed all the evidence, including the views expressed by Cooper.⁶

IV. The evidence was sufficient to support a finding of harassment.

Finally, appellant argues that the evidence was insufficient to support the district court's finding that she harassed Cooper. A district court may grant an HRO when it "finds at the hearing that there are reasonable grounds to believe that the respondent [to the petition for an HRO] has engaged in harassment." Minn. Stat. § 609.748, subd. 5(a)(3) (2022). Harassment is defined as "repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another." Minn. Stat. § 609.748, subd. 1(a)(1) (2022).

The district court determined that appellant engaged in repeated intrusive acts that had a substantial adverse effect on Cooper's safety, security, and privacy. Those acts included: removing Cooper from assisted living without the knowledge or approval of his family or guardian, using Cooper's money to pay her veterinary bill and buy a car, interfering with Cooper's ability to have contact with his family, preventing Cooper from meeting privately with his lawyers and guardian, delaying medical treatment for Cooper

⁶ We note that there is not always a perfect alignment of interests between a person subject to guardianship and that person's guardian, who is supposed to act in the best interests of the person subject to the guardianship. Thus, the mere fact that there is a disagreement between a person subject to guardianship and that person's guardian does not render the guardian's position defective. When such an unfortunate disagreement exists, the district court must address the matter as best as it can based on the facts and circumstances of that particular case.

when he broke his hip, attempting to remove Cooper from the hospital against medical advice and without the knowledge of his family or guardian, having contact with Cooper in violation of the ex parte HRO, evading service of the HRO, taking Cooper to Iowa to marry him after the ex parte HRO was issued, verbally abusing Cooper on one occasion that was witnessed by others, telling Cooper that he needed to do everything that she instructed him to do, forwarding Cooper's mail to her rather than to the guardian, and attempting to send Cooper's medical records to her attorney.

Appellant argues that, because Cooper did not believe appellant harassed him, appellant's conduct did not constitute harassment. But as previously noted, we must defer to the district court's findings regarding the credibility of Cooper's testimony. *See L.A.F.*, 554 N.W.2d at 396.

The record supports each of the district court's findings regarding appellant's conduct. And the district court did not abuse its discretion in determining that this conduct amounted to harassment. Because there was sufficient evidence that appellant harassed Cooper, the district court did not abuse its discretion in issuing the HRO.

Affirmed.